

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 12, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on March 12, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman Douglas A. Fox was present for the meeting, along with Commissioner Ricky Wright. Commissioner Mike Joyner was not present for the meeting.

MINUTES OF FEBRAURY 13, 2004 MEETING

The Chairman asked Commission Member Ricky Wright if he had any corrections or additions regarding the Commission minutes from the February 13, 2004, meeting. Commissioner Wright had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he had no conflict of interest. The Chairman stated he had to recuse himself from #20, Coastal Beverage Company and #66 Level 5 at the City Stage.

The Chairman made a motion to allow III, ABC Store Location, to be first because of time restraints. Seconded by Commissioner Wright. So Ordered.

III. ABC STORE LOCATION - JOHNSTON COUNTY ABC BOARD. ABC Administrator Michael Herring presented information regarding the proposed store location in Johnston County. ALE Supervisor Herbert I Battle, conducted the investigation and found that the proposed location would be within the Percy Flowers Store building. The proposed location is owned by Rebecca D. Flowers. The Johnston County ABC would be leasing the property from River Dell Company at \$2,100.00 per month. The nearest church is one mile south and the nearest school is one mile north from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has received one phone call in opposition. Swade Carroll, General Manager of the Johnston County ABC Board received several

complaints. Mr. Herring presented the Commission with copies of the minutes from the town meeting listing the individuals who opposed the proposed location and who were in favor of the proposed location and copies of pictures of the proposed location.

Mr. Herring stated that Swade Carroll was present to speak today, as well as Priscilla Weaver, a leasing agent with the River Dell Company in favor of the proposed location. Mr. Herring further stated that Reverend Charles Rambeau and Steve Lischins were opposed to the proposed location and wished to address the Commission also. Swade Carroll stated that they felt that the time was right to place a store in this location in order to better service the community. The area has grown tremendously. The Chairman asked what was in the location before. Mr. Carroll stated that an insurance office had been there.

Priscilla Weaver stated that they had mailed almost 1700 post cards to the citizens, asking for their support. Approximately 370 of the post cards have been returned in support. In addition 13 were returned in opposition. They also received 464 signatures on a petition in support of a store in that area. Mrs. Weaver stated that the proposed location would be a convenience to the residents in and around that area and would save them from driving to the busier location on Highway 70.

Reverend Charles Rambeau stated that the post cards that were sent out were not sent out to the entire community. He felt that the only survey that could be valid was the ones that were called in to the Johnston County ABC Board. Mr. Rambeau went on to state that there were 118 calls from people in opposition and 63 calls in favor of the proposed location. He further stated that there were only 10 parking spaces presently around the store. Mr. Rambeau said that there is an ABC Store in Selma, which is about seven or eight miles further south. Mr. Rambeau urged the Commission to reject the proposed store location.

Mr. Herring stated that the list of individuals who wished to address the Commission was growing and added another name to the list.

Steve Lischins, a citizen of the community, stated that he went around his community and got a petition with 163 signatures of individuals who opposed the proposed store location. Mr. Lischins stated that the property adjacent to the proposed location is zoned for commercial, but no one is buying the property yet. He felt that if they wished to build communities, then why not put professional individuals in it, like doctors, dentists or attorneys. He further stated that he couldn't see why a doctor or a dentist would want to put their business across the street from an ABC Store.

Mike Huffman, a citizen of the community, cited General Statute 18B-801. He further stated that there is an obvious safety hazard and concern with the traffic. He went on to state that it was inevitable that an ABC Store would be coming to

their area. But why couldn't it be moved to a suitable area, with adequate parking and entrances, like the Food Lion Shopping Center further down the road. Mr. Huffman asked to Commission to reject this particular proposed location and look for another site.

Clinton Singletary, a citizen of the community and father of three children, stated he has witnessed 20 accidents last year alone. He went on to state that he is not opposed to an ABC Store, only opposed to the proposed location. The proposed location is near a school. Mr. Singletary further stated that an alcoholic doesn't have a time frame of when he goes to buy his alcohol, so from 2:30-3:30 we are taking our children to soccer practice or what have you and that is the alcoholic's time of day.

Vincent Wilson, a retired New York State Police Officer and citizen of the community, stated that he has seen first hand what adverse effects ABC Stores can have on a community. Mr. Wilson stated that he has seen vagrants, homeless people, basically the undesirables who will come through and get their drink. They have no ties to the community. They will use whatever they can, like going into restrooms to drink or going to ponds to drink. He further stated that alcoholics will do anything to get a drink and they are not there in the community to make it grow. He went on to state that a true alcoholic doesn't eat. The alcohol is their food. When they finish with the alcohol, they litter the highway with their bottles. He went on to state that most alcoholics don't have a job, some are functional alcoholics, but most aren't. So crime increases, because they need money to buy their alcohol. Mr. Wilson finished by stating that he didn't move from Long Island, New York, to move here and still have to put up with the same problems.

Administrator Michael Herring stated that the Sheriff's Department would police the store. The store will have limited hours, which is Monday thru Thursday 10:00 a.m. – 7:00 p.m. and Friday and Saturday 10:00 a.m. – 9:00 p.m. Mr. Herring recommended that the Commission approve the proposed store location.

The Chairman stated that he took the opportunity yesterday to go out and see the store. He stated that Commissioner Wright was already familiar with the location. The Chairman went on to state that he did see the Food Lion Shopping Center and that there was some open space in that are, however he didn't see the proximately to the school as an issue. He further stated that he didn't think that the health, safety and well fair of the community would be an issue. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

The Chairman stated that he would like a copy of the letter from the North Carolina Board of Ethics attach to the minutes.

I. HEARING CASES – 79 LISTED

Chief Deputy Counsel Fred A. Gregory stated that there was no one present to speak in regard to the cases on the agenda. He did ask that the following cases be carried over to the next meeting; #20, Coastal Beverage Company; #66, Level 5 at the City Stage and #77 La Frontera Mexican Restaurant.

Mr. Gregory stated that in regard to case #53, Carolina Grocery, he had spoken with the permittee, Ms. Lazo, and she told him that when she had received the offer in compromise, she contacted her attorney and her attorney told her to stop selling alcohol beginning February 6, 2004, for ten days. She told Mr. Gregory that she did stop selling for the ten days. Mrs. Lazo didn't sign the offer in compromise and return it back to the Commission, so we had no way of knowing what happened. Mr. Gregory stated that he contacted her attorney and verified that their client was told to do that and that she did stop selling for those ten days. Mr. Gregory stated that he couldn't verify that she did stop selling. The permittee asked Mr. Gregory if the Commission would give her credit for the ten days that she said that she stop selling. The Chairman asked Mr. Gregory if he had a recommendation. Mr. Gregory stated that he couldn't verify if she did stop selling, but usually when situations like this occur and they say they closed down or stop selling, they do. He recommended that she be given ten days credit for being closed earlier. The Chairman made a motion to give credit for the ten days that she stopped selling. Seconded by Commissioner Wright. So Ordered.

LoRita K. Pinnix, Assistant Counsel, stated that there was one add on, #80, B P Shop. She stated that the permittee is selling the business and new people are going in. Mrs. Pinnix went on to state that we have a signed offer for the cancellation of permits. The Chairman made a motion to accept the signed offer. Seconded by Commissioner Wright. So Ordered.

Mrs. Pinnix stated that there was another item to be discussed. El Charro Mexican Restaurant, #17, which appeared on the February 13, 2004 agenda, had an error in the order. An Amended Final Agency Decision had been prepared to reflect the correct penalty that will read as....Respondent's ABC permits shall be suspended for 3 days beginning March 12, 2004. Such suspension may be avoided upon the permittee's payment of a penalty of \$600.00 on or before March 5, 2004. The Chairman made a motion to accept the Amended Final Agency Decision. Seconded by Commissioner Wright. So Ordered.

The Chairman stated that he had reviewed the first offense cases as per the resolution. Made a motion to adopt the orders as signed. Seconded by Commissioner Wright. So Ordered.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on February 13, 2004, pursuant to the Commission's authorizing resolution dated November 8, 2002:

American Legion- 1940 Donald Ross Road, Charlotte, NC 28266
Bi Lo 445- 4430 The Plaza, Charlotte, NC 28215
Bi Lo 261- 3120 Randalman Road, Greensboro, NC 27406
Bonefish Grill- 10056 East Independence Boulevard, Matthews, NC 28105
Express Way Limited- 513 East Main Street, Havelock, NC 28532
Fairway One Stop 13- 807 East Webb Avenue, Burlington, NC 27217
Flying Willies Sports Pub- 2614 Lawndale Drive, Greensboro, NC 27408
Gonzalos Baile Mexicano- 4610 US 301 South, Wilson, NC 27894
Handy Mart 24- 219 West Main Street, Havelock, NC 28532
Ingles Mini Mart- 6052 Burlington Road, Gibsonville, NC 27249
Lowes Food Store 422- 901 Beckford Drive, Henderson, NC 27536
Petro Express 24- 8505 South Tryon Street, Charlotte, NC 28273
Sportsters Bar and Grill- 6330 Wilkinson Boulevard, Charlotte, NC 28214
Tonys- 100004 Moores Chapel Loop Road, Charlotte, NC 28214
Trade Mart 14- 3314 Neuse Boulevard, New Bern, NC 28560

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to ratify all remaining offers in compromise. Seconded by Commissioner Wright. So Ordered.

III. OTHER BUSINESS

Acting General Counsel Tim W. Morse acknowledged that Lauren Freeman, Assistant Attorney General, from the Attorney Generals Office was present at the meeting. The Chairman greeted Mrs. Freeman.

Administrator Michael Herring stated that he had one more item to address the Commission about. He stated that he had a request for exemption from 18B-201(a) for Mr. Gary Addison Bawden. Mr. Herring went on to state that Mr. Bawden currently operates The Pub Restaurant, which hold ABC permits. Mr. Bawden was offered employment with the Wake County ABC Board. Mr. Bawden and his wife are looking to sell the business and are requesting an exemption from the Commission to be allowed to work with the Wake County ABC Board. Mr. Herring further stated that he approved the request prematurely and in speaking with Chief Deputy Counsel Fred A. Gregory, was advised that a little more work needed to be done in order to remove any potential conflict. Mr. Herring stated that over the past month we have worked with Mr. Bawden and he has removed himself from the corporation. The only involvement he would have with the restaurant is as a cook on his days off. So he as no financial interest in the corporation, his wife has taken over. Our records reflect that change in ownership and the business is still up for sale. Mr. Herring recommended that the

request for exemption be granted. The Chairman made a motion to approve the request for exemption. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that the legal division needed new Commission dates. The following dates are as follows: June 11, 2004, July 9, 2004 and August 13, 2004. Mr. Herring checked his calendar in regard to any previously scheduled appointments that he and the Chairman may have. Mr. Herring checked the calendar and found no conflicts. Mr. Herring asked if the Commission Meeting would still be at 9:30 a.m. The Chairman stated that Commissioner Joyner had requested that the time be moved to 10:00 a.m. and the Chairman stated that he understood because he also has to make the drive from Wilmington. The Commission Meeting time will now be held at 10:00 a.m.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division